

LEGISLATURE OF NEBRASKA  
NINETY-SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 140**

Introduced by Revenue Committee: Wickersham, 49, Chairperson;  
Coordsen, 32; Landis, 46; Raikes, 25; Schellpeper, 18

Read first time January 7, 1999

Committee: Revenue

A BILL

1 FOR AN ACT relating to Tax Equalization and Review Commission; to  
2 amend section 77-5015, Reissue Revised Statutes of  
3 Nebraska, and sections 77-1504.01, 77-5007, 77-5016,  
4 77-5019, and 77-5022, Revised Statutes Supplement, 1998;  
5 to change provisions for appeals to and from the  
6 commission; to authorize the use of videoconferencing at  
7 certain hearings and meetings; to provide for refunds of  
8 multiple filing fees; to repeal the original sections;  
9 and to declare an emergency.  
10 Be it enacted by the people of the State of Nebraska,

1                   Section 1.       Section 77-1504.01, Revised Statutes  
2 Supplement, 1998, is amended to read:

3                   77-1504.01. After completion of its actions and based  
4 upon the hearings conducted pursuant to sections 77-1502 and  
5 77-1504, a county board of equalization may petition the Tax  
6 Equalization and Review Commission to consider an adjustment to a  
7 class or subclass of real property within the county. Petitions  
8 must be filed with the commission on or before ~~August 1~~ July 26.  
9 The commission shall hear and take action on a petition filed by a  
10 county board of equalization on or before August 10. Hearings held  
11 pursuant to this section may be held by means of videoconference  
12 and shall comply with section 84-1411, except that a member of the  
13 commission need not be present at each videoconference site. A  
14 duly appointed representative of the commission shall be present at  
15 each videoconference site to take custody of any exhibits and keep  
16 a record of persons who appear at the hearing. Hearings conducted  
17 pursuant to this section shall be in the manner prescribed in  
18 section 77-5026. The burden of proof is on the petitioning county  
19 to show that failure to make an adjustment would result in values  
20 that are not equitable and in accordance with the law. The county  
21 assessor of the county adjusted by an order of the commission shall  
22 recertify the abstract of assessment to the Property Tax  
23 Administrator on or before August 20.

24                   Sec. 2.       Section 77-5007, Revised Statutes Supplement,  
25 1998, is amended to read:

26                   77-5007. The commission has the power and duty to hear  
27 and determine appeals of:

28                   (1) Decisions of any county board of equalization

1 equalizing the value of individual tracts, lots, or parcels of real  
2 property so that all real property is assessed uniformly and  
3 proportionately;

4 (2) Decisions of any county board of equalization  
5 granting or denying tax-exempt status for real or personal property  
6 or an exemption from motor vehicle taxes and fees;

7 (3) Decisions of the Property Tax Administrator  
8 determining the taxable property of a railroad company, car  
9 company, public service entity, or air carrier within the state;

10 (4) Decisions of the Property Tax Administrator  
11 determining adjusted valuation pursuant to section 79-1016;

12 (5) Decisions of any county board of equalization on the  
13 valuation of personal property or any penalties imposed under  
14 sections 77-1233.04 to 77-1233.06;

15 (6) Decisions of any county board of equalization on  
16 claims that a levy is or is not for an unlawful or unnecessary  
17 purpose or in excess of the requirements of the county;

18 (7) Decisions of any county board of equalization  
19 granting or rejecting an application for a homestead exemption;

20 (8) Decisions of the Department of Motor Vehicles  
21 determining the taxable value of motor vehicles pursuant to section  
22 60-3005;

23 (9) Any other decision of any county board of  
24 equalization; and

25 (10) Any other decision of the Property Tax  
26 Administrator.

27 Any person appealing from a final decision under this  
28 section shall file the appeal with the commission within thirty

1 days after the date of the decision appealed from.

2           Sec. 3.     Section 77-5015, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4           77-5015. Cases may be appealed to the commission within  
5 thirty days after the final action of the county board of  
6 equalization or Property Tax Administrator. Appeals regarding the  
7 valuation or exemption of multiple parcels involving the same owner  
8 and the same issues may be consolidated at the discretion of the  
9 commission. Any multiple filing fees for consolidated appeals  
10 shall be refunded by the commission if such fees were paid prior to  
11 the consolidation of appeals by the commission. In any case  
12 appealed to the commission all parties shall be afforded an  
13 opportunity for hearing after reasonable notice. The notice shall  
14 state the time, place, and issues involved, but if, by reason of  
15 the nature of the proceeding, the issues cannot be fully stated in  
16 advance of the hearing or if subsequent amendment of the issues is  
17 necessary, they shall be fully stated as soon as practicable.  
18 Opportunity shall be afforded all parties to present evidence and  
19 argument. The commission shall prepare an official record, which  
20 includes testimony and exhibits, in each case, but it shall not be  
21 necessary to transcribe shorthand notes unless requested for  
22 purposes of rehearing, in which event the transcript and record  
23 shall be furnished by the commission upon request and tender of the  
24 cost of preparation. Informal disposition may also be made of any  
25 case by stipulation, agreed settlement, consent order, or default.  
26 The commission shall adopt and promulgate rules and regulations for  
27 notice and hearing in cases appealed.

28           Sec. 4.     Section 77-5016, Revised Statutes Supplement,

1 1998, is amended to read:

2 77-5016. All cases appealed to the commission shall be  
3 granted an informal hearing unless a formal hearing is granted as  
4 determined by the commission according to its rules and  
5 regulations. In cases appealed to the commission:

6 (1) The commission may admit and give probative effect to  
7 evidence which possesses probative value commonly accepted by  
8 reasonably prudent persons in the conduct of their affairs. It  
9 shall give effect to the rules of privilege recognized by law. It  
10 may exclude incompetent, irrelevant, immaterial, and unduly  
11 repetitious evidence. Any party to a formal hearing before the  
12 commission, from which a decision may be appealed to the courts of  
13 this state, may request that the commission be bound by the rules  
14 of evidence applicable in district court by delivering to the  
15 commission at least three days prior to the holding of the hearing  
16 a written request. The request shall include the requesting  
17 party's agreement to be liable for the payment of costs incurred  
18 and upon any appeal or review, including the cost of court  
19 reporting services which the requesting party shall procure for the  
20 hearing. All costs of a formal hearing shall be paid by the party  
21 or parties against whom a final decision is rendered;

22 (2) The commission may administer oaths, issue subpoenas,  
23 compel the attendance of witnesses and the production of any  
24 papers, books, accounts, documents, statistical analysis, and  
25 testimony, and cause the depositions of witnesses residing either  
26 within or without the state to be taken in the manner prescribed by  
27 law for taking depositions in civil actions in the district court;

28 (3) All evidence including records and documents in the

1 possession of the commission of which it desires to avail itself  
2 shall be offered and made a part of the record in the case. No  
3 other factual information or evidence shall be considered in the  
4 determination of the case. Documentary evidence may be received in  
5 the form of copies or excerpts or by incorporation by reference;

6 (4) Every party shall have the right of cross-examination  
7 of witnesses who testify and shall have the right to submit  
8 rebuttal evidence;

9 (5) The commission may take notice of judicially  
10 cognizable facts and in addition may take notice of general,  
11 technical, or scientific facts within its specialized knowledge or  
12 statistical information regarding general levels of assessment  
13 within a county or a class or subclass of property within a county  
14 and measures of central tendency within such county or classes or  
15 subclasses within such county which have been made known to the  
16 commission. Parties shall be notified either before or during the  
17 hearing or by reference in preliminary reports or otherwise of the  
18 material so noticed. They shall be afforded an opportunity to  
19 contest the facts so noticed. The commission may utilize its  
20 experience, technical competence, and specialized knowledge in the  
21 evaluation of the evidence presented to it; and

22 (6) Any person testifying under oath at a hearing who  
23 knowingly and intentionally makes a false statement to the  
24 commission or its designee is guilty of perjury. For the purpose  
25 of this section, perjury is a Class I misdemeanor.

26 (7) The commission shall hear appeals and cross appeals  
27 taken under section 77-5007 as in equity and without a jury and  
28 determine de novo all questions raised before the county board of

1 equalization or the Property Tax Administrator which relate to the  
2 liability of the property to assessment or the amount thereof. The  
3 commission shall affirm the action taken by the board or Property  
4 Tax Administrator unless evidence is adduced establishing that the  
5 action of the board or the Property Tax Administrator was  
6 unreasonable or arbitrary.

7           Sec. 5.   Section 77-5019, Revised Statutes Supplement,  
8 1998, is amended to read:

9           77-5019.   (1) Any ~~person~~ party aggrieved by a final  
10 decision in a case appealed to the commission, ~~whether the decision~~  
11 ~~is affirmative or negative in form,~~ and any county or other  
12 political subdivision aggrieved by an order of the commission  
13 issued pursuant to section 77-5028 shall be entitled to judicial  
14 review in the Court of Appeals. Nothing in this section shall be  
15 deemed to prevent resort to other means of review, redress, or  
16 relief provided by law.

17           (2)(a) Proceedings for review shall be instituted by  
18 filing a petition in the Court of Appeals within thirty days after  
19 the ~~notification of the final decision date on which a final~~  
20 appealable order is entered by the commission. All parties of  
21 record shall be made parties to the proceedings for review. If the  
22 commission's only role in a case is to act as a neutral factfinding  
23 body, the commission shall not be a party of record. In all other  
24 cases, the commission shall be a party of record. Summons shall be  
25 served within thirty days after the filing of the petition in the  
26 manner provided for service of a summons in section 25-510.02. If  
27 the commission is not a party of record, the petitioner shall serve  
28 a copy of the petition and a request for preparation of the

1 official record upon the commission within thirty days after the  
2 filing of the petition. The court, in its discretion, may permit  
3 other interested persons to intervene.

4 (b) A petition for review shall set forth: (i) The name  
5 and mailing address of the petitioner; (ii) the name and mailing  
6 address of the county whose action is at issue or the commission;  
7 (iii) identification of the final decision at issue together with a  
8 duplicate copy of the final decision; (iv) the identification of  
9 the parties in the case that led to the final decision; (v) the  
10 facts to demonstrate proper venue; (vi) the petitioner's reasons  
11 for believing that relief should be granted; and (vii) a request  
12 for relief, specifying the type and extent of the relief requested.

13 (3) The filing of the petition or the service of summons  
14 upon the commission shall not stay enforcement of a decision. The  
15 commission may order a stay. The court may order a stay after  
16 notice of the application for the stay to the commission and to all  
17 parties of record. If the commission has found that its action on  
18 an application for stay or other temporary remedies is justified to  
19 protect against a substantial threat to the public health, safety,  
20 or welfare, the court may not grant relief unless the court finds  
21 that: (a) The applicant is likely to prevail when the court finally  
22 disposes of the matter; (b) without relief, the applicant will  
23 suffer irreparable injuries; (c) the grant of relief to the  
24 applicant will not substantially harm other parties to the  
25 proceedings; and (d) the threat to the public health, safety, or  
26 welfare relied on by the commission is not sufficiently serious to  
27 justify the commission's action in the circumstances. The court  
28 may require the party requesting the stay to give bond in such



1 amount and conditioned as the court directs.

2 (4) Within thirty days after service of the petition or  
3 within such further time as the court for good cause shown allows,  
4 the commission shall prepare and transmit to the court a certified  
5 copy of the official record of the proceedings had before the  
6 commission. The official record shall include: (a) Notice of all  
7 proceedings; (b) any pleadings, motions, requests, preliminary or  
8 intermediate rulings and orders, and similar correspondence to or  
9 from the commission pertaining to the case; (c) the transcribed  
10 record of the hearing before the commission, including all exhibits  
11 and evidence introduced during the hearing, a statement of matters  
12 officially noticed by the commission during the proceeding, and all  
13 proffers of proof and objections and rulings thereon; and (d) the  
14 final order appealed from. The commission shall charge the  
15 petitioner with the reasonable direct cost or require the  
16 petitioner to pay the cost for preparing the official record for  
17 transmittal to the court in all cases except when the petitioner is  
18 not required to pay a filing fee. The commission may require  
19 payment or bond prior to the transmittal of the record.

20 (5) The review shall be conducted by the court for error  
21 on the record of the commission. If the court determines that the  
22 interest of justice would be served by the resolution of any other  
23 issue not raised before the commission, the court may remand the  
24 case to the commission for further proceedings. The court may  
25 affirm, reverse, or modify the decision of the commission or remand  
26 the case for further proceedings.

27 (6) Appeals under this section shall be given precedence  
28 over all civil cases.

1                   Sec. 6.     Section 77-5022, Revised Statutes Supplement,  
2     1998, is amended to read:

3                   77-5022.     The commission shall annually equalize the  
4     values of all real property as submitted by the county assessors on  
5     the abstracts of assessments and equalize the values of real  
6     property which is valued by the state. For this purpose the  
7     commission shall meet ~~at the State Capitol~~ as soon as the abstracts  
8     of assessments have been submitted by the county assessors. The  
9     commission shall have the power to adjourn from time to time until  
10    the equalization process is complete. Meetings held pursuant to  
11   this section may be held by means of videoconference and shall  
12   comply with section 84-1411, except that a member of the commission  
13   need not be present at each videoconference site. A duly appointed  
14   representative of the commission shall be present at each  
15   videoconference site to take custody of any exhibits and keep a  
16   record of persons who appear at the meeting.

17                  Sec. 7.     Original section 77-5015, Reissue Revised  
18     Statutes of Nebraska, and sections 77-1504.01, 77-5007, 77-5016,  
19     77-5019, and 77-5022, Revised Statutes Supplement, 1998, are  
20     repealed.

21                  Sec. 8.     Since an emergency exists, this act takes effect  
22     when passed and approved according to law.